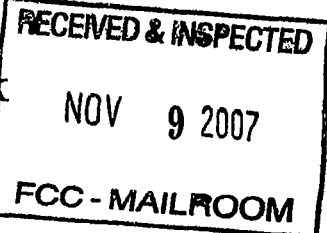


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November 7, 2007

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

RE: Reply Letter to NASUCA Letter dated November 7, 2007; EB Docket No. 07-197; File No. EB-06-IH-5037

Dear Madame Secretary:

Kurtis J. Kintzel, Keanan Kintzel, and all other Entities by which they do business before the Federal Communications Commission ("the Kintzels, et al."), file this original and 6 copies of this Reply Letter to the NASUCA Letter (directed to Ms. Dortch) dated November 7, 2007. That NASUCA letter mischaracterizes the arguments of the Kintzels, et al., against NASUCA's Petition to Intervene (which arguments were submitted as a series of informal requests, under 47 C.F.R. § 1.41). This Reply Letter addresses NASUCA's mischaracterizations, and reiterates the request to file an additional pleading in opposition to the NASUCA Petition to Intervene as a Party, based on the newly discovered facts.

The NASUCA letter contends, "It is difficult to understand let alone condone the failure of counsel for the Kintzels et al., to have 'discovered' from the Commission web site at <http://www.fcc.gov/cgb/dctac/cdtac.html> that each of the Commission's committees is advisory in nature; and that actions of those committees are actions of the committee, not any one or more of its members, none of whom are employed by the Commission."

If NASUCA is attempting to argue that an advisory committee has little influence with the Commission, the argument is unpersuasive. The transcript of the committee meeting held on August 6, 2001 indicates that two Commissioners attended the meeting (Michael Copps and Kevin Martin).<sup>1</sup> The transcript also indicates that the committee was very ambitious about getting its recommendations adopted ("Ms. Rooker: We're being very ambitious for a new group in that we're trying to reach a consensus and make recommendations to the Commission on Universal Service Fund."<sup>2</sup>). The committee meetings apparently were held at the FCC building,<sup>3</sup> and during the August 6, 2001 meeting, a "continental breakfast and lunch" were provided to the

<sup>1</sup> Transcript of FCC's Consumer/Disability Advisory Committee meeting, Aug. 6, 2001, at <http://www.fcc.gov/cgb/dctac/080601transcript.html>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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committee members paid for by Cingular Wireless<sup>4</sup>; "travel expenses" of some members were paid for by NCR Ideal; and Sprint "generously contributed teleconferencing services."<sup>5</sup> Sprint is a competitor of the Kintzels, et al. In a previous filing, the Kintzels, et al., questioned the propriety of NASUCA's participation as a second prosecutor of sorts without disclosing the sources of its funding. It appears that, while NASUCA's legal counsel was a member of the advisory committee, that legal counsel received benefits from Sprint. The Kintzels, et al., would reiterate their request from the previous filing, that NASUCA (including its legal counsel) reveal the sources of its funding.

As to the argument that committee members were not "employed by the Commission": The fact that committee meetings were held in the FCC building, with benefits provided by corporate sponsors, and partaken of, willingly, by two Commissioners, consumer groups, and associations, suggests that the advisory committee was a joint venture between the FCC and private entities. To argue that the advisory committee was independent of the FCC is simply not credible.

The NASUCA letter does not deny that Ms. O'Reilly was a member of that committee. NASUCA merely argues that the "actions of those committees are actions of the committee, not any one or more of its members." Even if Ms. O'Reilly disavowed the decisions made by that advisory committee today, it would not retroactively erase her former association with and participation on that committee. A committee is composed of its members. Unless Ms. O'Reilly was an unwilling and non-participating member of the committee (and that is not what the transcript of the meeting on August 6, 2001 indicates<sup>6</sup>), Ms. O'Reilly and the organization that she represents (NASUCA) is not independent of the FCC on the issues implicated in the instant proceeding for which that committee ambitiously served as advisor to the FCC (universal service fund contributions, carrier changes, perhaps others).

The NASUCA letter also contends, "More serious and offensive is the suggestion in [sic] that anyone who represents the consumer point of view as a member of a Commission advisory committee is precluded from being subsequently employed to represent the consumer point of view in any future Commission proceeding."

That counterargument misstates (and overstates) the argument of the Kintzels, et al. The Kintzels, et al., are not seeking to invalidate the participation of advisory committee members in "any future Commission proceeding." The Kintzels, et al., are only seeking to invalidate the participation of NASUCA in the instant proceeding; the request is that narrow. The NASUCA letter indicates that Ms. O'Reilly is a consumer advocate with "extensive experience"<sup>7</sup>; the Kintzels, et al., do not question her experience or credentials. The Kintzels, et al., only point out that Ms. O'Reilly served on an advisory committee that was instrumental in formulating FCC policy on issues central to the instant proceeding; those very issues are being litigated, with penalties of \$50 million proposed against the Kintzels, et al. NASUCA is seeking to prosecute the accused parties while claiming to be independent of the FCC, but Ms. O'Reilly's

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> NASUCA Letter, dated November 7, 2007.

membership on the FCC advisory committee and acceptance of numerous benefits while a member of that committee militates against such assertions of independence.

If NASUCA is denied intervention as a party, but permitted to give evidence as a non-party, under 47 C.F.R. § 1.225(b), or deposed under the discovery rules (since non-parties can be deposed by any party, under 47 C.F.R. § 1.315), NASUCA could still contribute its evidence without undermining the validity of the instant proceedings with suggestions of collusion and improper influence, and attempting to put forth the insupportable contention that there are two prosecutors, when there is in effect only one.

The NASUCA letter also contends, “the Kintzels et al appear to have in effect conceded their earlier argument about NASUCA’s independence. The Kintzels et al cannot now contend that NASUCA is effectively an arm of the FCC yet simultaneously contend that NASUCA is compromised by ‘possible’ funding from corporate competitors (as was the claim in their letter of October 30, 2007).”

Apparently when that statement was written, NASUCA’s legal counsel forgot that she had accepted benefits from corporate sponsors while a member of the FCC advisory committee. She and other committee members received benefits from Cingular Wireless, NCR Ideal, and Sprint; the committee members were also eagerly seeking to advise the FCC on policy issues. Thus, NASUCA’s contention that the two positions—receipt of corporate benefits and alliances with the FCC—are not mutually exclusive. In fact, the membership of NASUCA’s legal counsel on that committee is a perfect illustration of how it can happen.

NASUCA’s letter contends, in its final argument, “Lest the Kintzels et al continue to harbor any further anxiety as to NASUCA’s independence, attention is directed to the extensive NASUCA filings at the FCC in which Commission action or inaction is criticized, and to the various appeals that NASUCA has taken on various Commission decisions.”

Again, NASUCA misstates (and overstates) the argument of the Kintzels, et al. The Kintzels, et al., never alleged that NASUCA was united with the FCC on every case in the history of FCC proceedings. The Kintzels, et al., only allege that NASUCA is united with the FCC in the instant proceeding, and present the evidence of that unity, which poses such a serious risk to the substantial rights of the Kintzels, et al., in which \$50 million in penalties is proposed, that the Kintzels, et al., submit this Reply Letter to address the arguments of NASUCA’s letter dated November 7, 2007, and to reiterate the request to file an additional pleading.

NASUCA’s statement, “Lest the Kintzels et al continue to harbor any further anxiety as to NASUCA’s independence,” betrays complete unawareness on the part of NASUCA of the appearance of impropriety and substantial injustice that would result from a proceeding in which \$50 million in penalties is imposed against the accused parties by a single prosecutor, claiming to be two separate prosecutors, to add credibility to the judgment. Fifty million in penalties is no laughing matter, and the request of the Kintzels, et al., to file an additional pleading or, in the alternative, that NASUCA’s Petition to Intervene as a Party be denied outright, is submitted to attempt to prevent the denial of the accused parties’ substantial rights.

Sincerely,

*Catherine Park, Esq.*

Catherine Park, Esq.

Enclosures: Original + 6 Copies

**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Letter to NASUCA Letter Dated November 7, 2007 was sent for filing on this 7<sup>th</sup> day of November 2007, by U.S. Mail, Express Mail, to the following:

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
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And served by U.S. Mail, First Class, on the following:

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